and should be eliminated. Fault at sea will produce almost absolutely different consequences from those on the land.

This may appear to be casuistry; the results seem so violently wrong that these conclusions may be escaped by some course of ratiocination which is not apparent. The fallacy is, however, in the first step of the reasoning, which, by giving the shipper the right to destroy the insurer's right of subrogation without his assent or knowledge (a right given by law to every surety who indemnifies his principal), has not seen the consequences which follow in a commercial system which has been the work of years.

It is the first step which counts—the rest reasonably follows as soon as it is determined that an insurance of goods is a right in the *res*, which follows the goods into whosoever hands the title comes, whether by assignment for a consideration or acquired by paying for a wrongful act of destruction. This, if correct, is a new view of the contract. Barratry of the master or an act of spoliation will create liability on the part of the shipowner, and must therefore be paid for by the insurers of the cargo; it is to be hoped that liability occasioned by unseaworthiness will not also be visited on the insurers of cargo.

The judicial mind has, with one exception, in this long controversy throughout the many phases it has assumed, been so single-minded as to the effect of this clause in the shipper's contract, that there may be a vice in these views which has not been seen by the writer. The results of the litigation by which the underwriter has been compelled to bear losses he did not contract to pay, in the struggle by the carriers to escape payment for losses for which they are liable, suggests the saying in regard to the naval action of Navarino, that "it was a very good fight, only the wrong man was knocked down."

MORTON P. HENRY.

Philadelphia.

RECENT AMERICAN DECISIONS.

United States Circuit Court, Eastern District of Wisconsin.

CRANDAL *v.* ACCIDENT INS. CO. OF NORTH AMERICA.

Where one whose judgment and will are overthrown by insanity, takes his own life by hanging himself, his act is not "suicide," within the meaning of that word as used in accident policies of insurance, nor are his injuries considered "self-inflicted," or his death "caused wholly or in part by infirmity or disease." It is considered to

have been caused by injuries "effected through external, accidental and violent means."

Where the last of several successive causes has produced an effect, the law will not regard the cause of that cause.

Where an application for insurance differs from the policy issued thereon, it is not considered a part thereof, and admissions by the assured in his application as to the extent of the insurance do not limit the insurer's liability.

AT LAW. Motion for a new trial in suit on an accident policy of insurance.

House, Fry & Rabb, for plaintiff.

Thomas Bates, for defendant.

The opinion of the court was delivered by

DYER, J.—On the 23d day of May 1884, the defendant company issued to Edward M. Crandal, since deceased, an accident policy of insurance, by which it promised to pay to the plaintiff, who was the wife of the insured, the sum of $10,000, within thirty days after sufficient proof that the insured, at any time within the continuance of the policy, had sustained bodily injury effected through external, accidental and violent means, within the intent and meaning of the contract and the conditions thereunto annexed, and such injuries alone had occasioned death within ninety days from the happening thereof. It was provided in the policy that the insurance should not extend to death or disability, "which may have been caused, wholly or in part, by bodily infirmities or disease." Further, that no claim should be made under the policy if the death of the insured should be caused by suicide or self-inflicted injuries.

While this policy was in force, the insured, Edward M. Crandal, took his own life by hanging, and the jury, to whom the case was submitted for a special verdict on the facts, has found that at the time of the act of self-destruction he was insane. The question reserved for consideration by the court, and now to be determined, is, whether the death was one covered by the policy. The question of liability, as it here arises upon an accident policy of insurance, seems to be one of first impression. Unaided by direct authority, the court is called on to determine: *First.* Whether under such a policy as this, death from self-destruction, occurring when the insured is insane, may be said to have been caused by bodily injuries effected through accidental means. This question, it will be understood, is here to be considered independently of the question

whether disease or physical infirmity was a promoting cause of death.

The verdict of the jury was unquestionably right. The case was one in which the evidence clearly established the fact of insanity. The symptoms of a disordered mind were manifested in the countenance, conduct and conversation of the insured. He was sleepless, was sometimes unduly excited, then unnaturally depressed. He suffered to such an extent from melancholy that he abandoned his accustomed habits and pursuits. Fondness for family and friends changed to indifference, and, in short, his reasoning powers and self-control appear to have been prostrated by the fear of want, and by morbid impulses and delusions, such as in this species of insanity impel to self-destruction. Upon the facts shown, the jury might well find that his judgment, his volition, his will, were overthrown, so that in the language of Mr. Justice NELSON, when Chief Justice of New York, in the case of *Breasted* v. *Farmers' L. & T. Co.*, 4 Hill 73, 75, "The act of suicide was no more his act in the sense of the law than if he had been impelled by irresistible physical power." Upon the verdict and the facts which sustain it, it may then be assumed that when the deceased took his life it was not his voluntary rational act. He could not exercise his natural powers of volition, and thereby control his judgment upon the act he was about to commit. The physical violence, therefore, which terminated his life, was the same as if it had come upon him from sources outside of himself, and for which he was not responsible. It was force emanating, not from the brain and hand of Edward M. Crandal, as a responsible voluntary agent, but force which was uncontrollable so far as he was concerned. The means employed to produce death were external and violent. Were they not also in a just and true sense accidental, if the deceased was so far bereft of his reasoning faculties that his act was not the result of his will, or of a voluntary operation of his mind? If, in consequence of his condition of irresponsibility, the violence which he inflicted upon himself was the same as if it had operated upon him from without, why was not the death an accident within the definition of the term as given by Bouvier, namely, "an event which under the circumstances is unusual and unexpected by the person to whom it happens. *The happening of an event without the concurrence of the will of the person by whose agency it was caused*"?

No case has been cited where the question, as here presented,

was directly in judgment; but there are *dicta* which afford some aid in reaching a conclusion. In 7 Amer. L. Rev. 587, 588, various definitions of an accident, as the term is used in insurance policies, are given, namely: "An accident is any event which takes place without the oversight or expectation of the person acted upon or affected by the event:" *Ripley* v. *Ry. Passengers' Assurance Co.*, 2 Bigelow's Cases 738; *Providence Life Ins. Co.* v. *Martin*, 32 Md. 310. "It is any unexpected event which happens as by chance, or which does not take place according to the usual course of things:" *N. Am. Ins. Co.* v. *Burroughs*, 69 Penn. St. 43. "It is something which takes place without any intelligent or apparent cause, without design, and out of course:" *Mallory* v. *Travelers' Ins. Co.*, 47 N. Y. 52. "Some violence, casualty or *vis major* is necessarily involved" in the term accident. It means, in short, in insurance policies, "any injury which happens by reason of some violence, casualty or *vis major* to the assured without his design or consent or voluntary co-operation." Similar definitions are given by Mr. Justice PAINE in his discussion of the question, in *Schneider* v. *Ins. Co.*, 24 Wis. 30.

In *Scheiderer* v. *Ins. Co.*, 58 Wis. 14, it was alleged in the pleading, that while the assured, who was travelling in a railway car, "was in a dazed and unconscious condition of mind, and not knowing or realizing what he was doing, he involuntarily arose from his seat and walked unconsciously to the platform of the car, and fell therefrom to the ground;" and it was held that this constituted a good cause of action upon a policy of accident insurance. Here, it is true, the injury resulted from falling from the car; but since the moving cause was the involuntary act of leaving the seat and walking to the platform, the case suggests the inquiry, if, for example, a person in a fit of somnambulism, or in delirium, not knowing or realizing what he is doing, involuntarily inflicts injury upon himself—that is, by means of his own hand—and death ensues, is not such an injury as much the result of accident, as if, in the same circumstances, the injury results from other external forces, such as falling from the platform of a moving train?

In *Hill* v. *Ins. Co.*, 22 Hun 189, the insured took poison by mistake, and died suddenly. The court said that death occurred through accidental means. The taking of poison was not the result of the will or intention of the person, and was therefore not his voluntary act. It was adjudged, however, that the plaintiff could not

recover, on the ground that the policy contained a clause, that the company should not be liable if death should be caused by taking poison. And this clause was held to exempt the company from liability, whether the poison was taken intentionally or by mistake. In *Pierce* v. *Travelers' Insurance Co.*, 34 Wis. 395, Mr. Chief Justice DIXON, speaking for the court, in interpreting the clause in the policy in question in that case, referred to instances of death resulting from an act committed under the influence of delirium, as if the person should, in a paroxysm of fever, precipitate himself from a window; or, having been bled, remove the bandages; or, should take poison by mistake; and observed, that deaths thus produced "are more properly denominated deaths by accident than deaths by suicide. * * * Deaths so caused, are held to be deaths by accident within the meaning and purpose of policies of insurance against accident, as where a man negligently draws a loaded gun towards him by the muzzle, or the servant fills the lighted lamp with kerosene, and the gun is discharged, and the lamp explodes." In *Horn* v. *Life Ins. Co.*, 7 Jur. (N. S.) 673, the court, in passing upon the question, whether a policy of insurance upon life is rendered void by the suicide of the insured, when insane, speaks of such a death as just as much an accident as if the insured had fallen from the top of a house.

In *Breasted* v. *Farmers' L. & T. Co.*, 8 N. Y. 306, it was observed by the court, that "a death by accident and a death by the party's own hand, when deprived of reason, stand on principle in the same category. In both cases the act is done without a controlling mind."

To maintain the proposition that because his own hand constituted the violent means employed by the insured in taking his life, those means were not external and accidental, it is necessary to take a distinction between force emanating from the insane person himself, and force operating independently from without. I can hardly think there is ground for such a distinction. The injury and the death seem equally fortuitous in both cases, for in neither case is there a concurring will which prompts the act. An insane man burns his own insured property. The insurer is nevertheless liable for the loss, unless its contract expressly exempts it from liability, even in case of such a burning; this, for the reason that the act was not voluntary, or done with the assent, procurement or design of the assured as a rational person: *Karow* v. *Continental Ins. Co.*,

57 Wis. 56. Although, in the darkness that enveloped his mind, the hand of Edward M. Crandal adjusted the fatal noose, the act was no more attributable to his voluntary agency, than if, as a sane man walking the street in the darkness of night, the same fatality, without co-operation on his part, or even consciousness of danger, had overtaken him. Therefore, it would seem that in the one case as in the other, the death would be attributable to casualty. Additional force is given to this view of the question, when we consider that in cases arising upon life insurance policies decided by the Supreme Court of the United States, it has been repeatedly held that if the insured, while in the possession of his ordinary reasoning faculties, from any motive, intentionally takes his own life, such death is within the proviso on the subject of suicide, and the insurer is not liable. On the contrary, if the insured takes his life when insane, then the death can not be said to be "by his own hand," and the insurer is liable. And so it would seem to follow, that, as in the latter instance, the act of self-destruction is not the act of the party, it must be regarded in a case like the present, as brought about by means which are accidental, because not the result of the concurring will of the insured.

It is to be further observed that in the policy in suit the company declares that it incurs no liability in case of death from suicide or self-inflicted injuries. Thus it appears that the insurer took into consideration the possibility that the insured might voluntarily, and with deliberate intent—that is, as a sane person—take his life, and in such case the death was not to be regarded as covered by the contract, because not effected by accidental means. This is the import of this clause in the policy; but no provision is made against suicide when insane. And this also adds force to the view that the contract is fairly open to the construction contended for by the plaintiff. By the term "self-inflicted injuries," as used in the policy, was not meant injuries inflicted by the insured upon himself when insane, but injuries self-inflicted when capable of rational, voluntary action.

Several cases have been cited by counsel for the defendant. Among them is *Harris* v. *Travelers' Ins. Co.*, decided by the Superior Court of Chicago in 1868, and referred to in 7 Am. Law Rev. 589; but the point here involved does not seem to have been there raised. The deceased was a fireman, who was accidentally buried under a falling wall, but was soon rescued without apparent

injury, and continued his work for three months, when he took poison. In a suit to recover the insurance on the ground that the accident rendered him insane, it was held that if he was insane on account of the accident, the death was too remote to be covered by the policy, which included only proximate results. It would seem that the plaintiff relied upon the original accident as a ground of recovery, and that was held too remote. Another case cited is *Pollock* v. *U. S. Mut. Accident Assoc.*, 28 Alb. L. J. 518. But all that was decided in that case was, that the defendant was not liable for a death by poison, because the contract so expressly provided; and in view of that provision it made no difference whether the poison was innocently or intentionally taken. There was no question of insanity involved, and moreover the death was not caused by "external violence," and this was one of the prerequisites to recover as fixed in the contract. In *Bayless* v. *Travelers' Ins. Co.*, 14 Blatchf. 144, the question of insanity did not arise, and it is on the same line in principle with *Pollock* v. *U. S. Mut. Accident Assoc.*, *supra*.

On the whole, my conclusion is, that the death of the insured, Edward M. Crandal, resulted from injuries effected through accidental and violent means, within the meaning of the policy in suit.

Second. Still another and equally interesting question remains to be determined. The contention of the defendant is, that the death in this case was caused by bodily infirmities or disease, namely, the insanity of the insured, and therefore that the plaintiff cannot recover. As has been observed, the policy provides that the company shall not be liable if the death be "caused wholly or in part by bodily infirmities or disease." The policy further recites that it is issued in consideration of the warranties made in the application for insurance, and of the premium paid; and in the application signed by the assured, he makes certain statements of fact usual in such cases, the last of which, numbered fifteen, is as follows: "I am aware that this insurance will not extend to * * * any bodily injury happening directly or indirectly in consequence of disease; nor to death or disability caused wholly or in part by bodily infirmities, or by disease; * * nor to any case except when the accidental injury shall be the proximate and sole cause of disability or death." This is not a warranty of any fact. It is, in effect, merely an admission of knowledge on the part of the insured of such limita-

tions of liability as may be declared in the policy. As, therefore, it is to the policy we must look for these limitations, it is observable that the policy does not declare that the insurance shall not extend to any bodily injury, "happening directly or indirectly in consequence of disease;" but only that it shall not extend "to death or disability which may have been caused wholly or in part by bodily infirmities or disease." This, then, is the limitation of liability to be considered as it is expressed in the policy issued and delivered subsequently to the application for insurance, rather than the statements on the subject contained in the application. The fifteenth clause in the application is not referred to in the policy. Wherein therefore it differs from the written contract, it is no part of the contract.

The argument of counsel for the defendant, is, in brief, that insanity is a bodily infirmity or disease; that in ordinary life insurance cases it is regarded and characterized by the courts as a disease, and therefore it is, that insurance companies are held liable in cases of suicide when the insured was insane. Further, that in the case in hand, the act of self-destruction was occasioned by the insanity, and so that within the meaning of the policy, the death was caused by disease. I was much impressed with the force of this argument, and I may use the language of DENMAN, J., in a case hereafter referred to, "but for *Winspear* v. *Accident Ins. Co.*, 6 Q. B. Div. 42, I am not sure but that I should have thought the company were protected."

It is true that in cases upon life policies, death by an insane suicide is regarded by the courts as death by disease. As it is expressed in *Eastabrook* v. *The Union Mut. Life Ins. Co.*, 54 Me. 224, "Death by disease is provided for by the policy. Insanity is a disease. Death which is the result of insanity, is death by disease." It is to be borne in mind, however, that this and similar observations are made in a class of cases where the insurance is not special but general, and where the protection which it is intended to afford, covers all diseases and disorders—other than those which may be specially excepted—which result in death. In the case of a life policy it may not matter whether the disease of insanity, or the particular act of self-destruction be regarded as the immediate cause of death. It is the life which is insured, and liability arises when death occurs, unless the death is within one of the specially excepted cases enumerated in the policy. The fact, therefore, that

in such cases it is said that death which is the result of insanity, is death by disease, does not reach the question we have here, which is—what, under the provisions of a policy which covers accidents only, was the cause of death? In the sense of the clauses on the subject in this policy, was the death caused by disease, or by the act of violence in question? Although the words of the policy are "caused *wholly or in part* by bodily infirmities or disease." I suppose the true inquiry is, what was the actual proximate cause of death? For in law there is but one cause. That is the proximate cause, which may either directly or indirectly produce the result. If the death was caused *in part* by disease, the disease must have been a proximate cause of death.

"One of the most valuable *criteria* furnished us by the authorities," says Mr. Justice MILLER, in *Ins. Co.* v. *Tweed*, 7 Wall. 44, "is to ascertain whether any new cause has intervened between the fact accomplished and the alleged cause. If a new force or power has intervened of itself sufficient to stand as a cause of the misfortune the other must be considered as too remote." In *Ins. Co.* v. *Trans. Co.*, 12 Wall. 199, it was said by Mr. Justice STRONG, "There is undoubtedly difficulty in many cases attending the application of of the maxim *proxima causa non remota spectatur*, but none when the causes succeed each other in order of time. In such cases the rule is plain. When one of several successive causes is sufficient to produce that effect, the law will not regard an antecedent cause of that cause, or the '*causa causans*.' In such a case there is no doubt which cause is the proximate one within the meaning of the maxim. But when there is no order of succession in time, when there are two concurrent causes of a loss, the *predominating efficient one* must be regarded as the proximate, when the damage done by each cannot be distinguished."

The cases most nearly in point upon the question here in judgment, are *Reynolds* v. *Accidental Ins. Co.*, 22 Law T. Rep. (N. S.) 820; *Winspear* v. *Accident Ins. Co.*, (*Limited*), L. R., 6 Q. B. Div. 42; *Lawrence* v. *Accidental Ins. Co.*, (*Limited*), 7 Id. 216; and *Scheffer* v. *Railroad*, 105 U. S. 249. Although it may extend this opinion to greater length than is desirable, it seems necessary to give attention to these cases somewhat in detail.

In the *Reynolds Case*, the facts were that Thomas Humphrey effected with the defendant company "a policy of insurance whereby it was declared that if during the continuance of such policy the

said Thomas Humphrey should receive or suffer bodily injury from any accident or violence, in case such accident or violence *should cause the death* of the said Thomas Humphrey within three calendar months after the occurrence of such accident or violence, the full sum of three hundred pounds should be payable to the personal representatives, &c. * * * *Provided also*, and it is hereby expressly agreed and declared that no claim shall be payable by the said company under the policy in respect of death or injury by accident or violence, unless such death or injury shall be occasioned by some external and material cause operating upon the person of the said insured, and unless in the case of death as aforesaid, *such death shall take place from such accident or violence* within three calendar months, &c."

It appeared that Humphrey, while the policy was in force, went into the sea to bathe. While in a pool about one foot deep, he became suddenly insensible from some unexplained internal cause, and fell into the water with his face downwards. A few minutes afterwards he was found lying dead with his face in the water, and water escaped from his lungs in such a manner as to prove that he had breathed after falling into the water. The question for the opinion of the court was, whether the death of Humphrey occurred in a manner entitling the plaintiff as his executor to receive the sum of three hundred pounds under or by virtue of the policy. *Bosanquet*, for the defendant, argued, that "if a man is pushed into the water, or forcibly held down in it, his death then results from violence within the meaning of the policy. If a man accidentally falls into the water and is drowned, his death results from accident; *but if a man falls down in a fit in a shallow pool, and is drowned, his death is the result, not of accident, or of violence, but of the fit*, even though the immediate cause of death be, as here, suffocation by drowning." WILLES, J. said "In this case the death resulted from the action of the water on the lungs, and from the consequent interference with respiration. *I think that the fact of the deceased falling in the water from sudden insensibility was an accident*, and consequently our judgment must be for the plaintiff." It is to be observed of this case, that it has only a general application to the question under consideration, because the proviso in the policy contained no such condition as we have here in relation to disease as a cause, in whole or in part, of death.

In the *Winspear Case*, the facts were, that W. effected an insur-

ance with the defendants against accidental injury, and by the terms of the policy the defendants agreed to pay the amount insured to W.'s legal representatives, should he sustain "any personal injury caused by accidental, external and visible means," and the *direct effect* of such injury should cause his death. The policy also contained a proviso that the insurance should not extend "*to any injury caused by or arising from natural disease or weakness, or exhaustion consequent upon disease, * * * or to any death arising from disease, although such death may have been accelerated by accident.*" During the time the policy was in force, and whilst W. was crossing a stream, he was seized by an epileptic fit and fell into the stream, and was drowned *whilst sufferiny from the fit*, but he did not sustain any personal injury to occasion death, other than drowning.

Here it was argued that there would have been no drowning had the insured not had an epileptic fit; that it was the fit which caused the drowning, and that the death, therefore, was from an injury caused by the fit. Just as it is argued in the case at bar, that there would have been no suicide had the insured not been insane; that it was the insanity which caused suicide, and that, therefore, the death was from an injury caused by insanity. But COLERIDGE, C. J., said: "I am of opinion that this judgment should be affirmed, and that on very plain grounds. It appears to be clear from the statement in this case, that the insured died from drowning in the waters of the brook whilst in an epileptic fit, and drowning has been decided to be an injury, because in the words of this policy, caused by "accidental, external and visible means." I am, therefore, of opinion, that the injury from which he died was a risk covered by this policy, and the only question then remaining is, whether the case is within the proviso which provides that the insurance "shall not extend to death by suicide, whether felonious or otherwise, or *to any injury caused by or arising from natural disease or weakness, or exhaustion consequent upon disease.*" It is certainly not within the first part of this proviso, because the death was not so occasioned. Neither does it appear to me, that the cause of death was within those latter words of the proviso. *The death was not caused by any natural disease or weakness or exhaustion consequent upon disease, but by the accident of drowning.* I am of opinion, that those words in the proviso mean what they say, and that they point to an injury caused by natural disease, as if, for in-

stance, in the present case, epilepsy had really been the cause of the death. The death, however, did not arise from any such cause, and those words have no application to the case, and therefore the judgment of the Exchequer Division must be affirmed." This case, in its facts and upon principle, appears to be directly in point; for if there the death was not in a legal sense caused by the fit, but by the drowning, so here it was not caused by the insanity or disease, but by the act of self-destruction.

In the case of Lawrence, there was a policy of insurance against death from accidental injury, which contained the following condition: "This policy insures payment only in case of injuries accidentally occurring from material and external cause, operating upon the person of the insured, where such accidental injury is the direct and sole cause of death to the insured. * * * *But it does not insure in the case of death arising from fits;* * * * *or any disease whatever arising before or at the time or following such accidental injury* (whether consequent upon such accidental injury or not, and whether causing such death directly or jointly with such accidental injury)." The insured, while at a railway station, was seized by a fit, and fell off the platform across the railway, and an engine and carriage passed over his body and killed him. The falling forward of the insured off the platform was in consequence of his being seized with a fit or sudden illness, and but for such fit or illness he would not have suffered injury or death.

DENMAN, J., following the authority of *Winspear* v. *Accident Ins Co.*, held the company liable.

WILLIAMS, J., placed his concurring opinion upon the following grounds: "The whole case depends upon the true construction of the words in the proviso in this case. The deceased person having fallen down suddenly in a fit from the platform of the railway on to the rails, was, while lying there, accidentally run over by a train that happened at that moment unfortunately to come up; and he was undoubtedly killed by the direct external violence of the engine upon his body, which caused his death immediately. The question arises whether, according to the true construction of the proviso, it can be said that this is a case of death arising from fits; because if this death did not arise from a fit, according to the true construction of the policy, the remainder of the clause does not come into existence at all, and is inapplicable. It seems to me that the

well-known maxim of Lord BACON, which is applicable to all departments of law, is directly applicable in this case. Lord BACON'S language in his Maxims of the Law, Reg. 1, runs thus: 'It were infinite for the law to consider the causes of causes, and their impulsions one of another. Therefore, it contenteth itself with the immediate cause.' Therefore I say, according to the true principle of law, I must look at only the immediate and proximate cause of death; and it has seemed to me to be impracticable to go back to cause upon cause, which would bring us back ultimately to the birth of the person, for had he not been born, the accident would not have happened. The true meaning of this proviso is, that if the death arose from a fit, then the company are not liable, even though accidental injury contributed to the death, in the sense that they were both causes which operated jointly in causing it. That is the meaning, in my opinion, of this proviso. But it is essential to that construction that it should be made out that the fit was a cause, in the sense of being the proximate and immediate cause of the death, before the company are exonerated; and it is not the less so because you can show that another cause intervened and assisted in the causation."

Thus it appears, that although the proviso in the policy in that case was that if the death should arise from a fit, the company should not be liable, even though accidental injury contributed to the death by operating jointly with the fit, it was, nevertheless, held essential to show that the fit was a cause in the sense of being the immediate cause of death, in order to exonerate the company.

Scheffer v. *Railroad, supra*, only has application here by way of analogy. In that case a passenger on a railway car was injured by a collision of trains, and became thereby disordered in mind and body, and some eight months thereafter committed suicide. It was held in a suit by his personal representatives against the railway company, that his own act was the proximate cause of his death, and that therefore there could be no recovery.

Although it may be said that Crandal would not have committed suicide had he not been insane, and so that the insanity was a promoting cause of death, upon the reasoning and authority of the cases referred to, the conclusion seems unavoidable that the act of self-destruction must be regarded, within the meaning of the policy, as the true and proximate cause of his death. Quite against my first impressions when the case was submitted, I am constrained to hold

upon deliberate consideration, that the plaintiff is entitled to recover. If I am wrong in my conclusions, it is a gratification to know that the case is one that may be taken to the Supreme Court for its judgment, and in which the error, if error has been committed, may be there corrected.

Judgment for plaintiff on the verdict.

It is seldom that either a life or accident policy of insurance is issued which does not contain a provision intended to protect the insurer against liability in some or all cases of self-destruction by the assured. In most of the cases in which such provisions have come before the courts, as in the principal case, the question has been as to their application in cases of self-destruction while insane. It has never, perhaps, been doubted by any court, that self-destruction resulting directly from insanity is as much insured against by an ordinary policy of insurance containing no provision on the subject as death resulting from any other disease; and, it is equally well settled that a provision that the company shall not be liable on the policy in case of self-destruction by assured while insane (*Bigelow* v. *Berkshire Life Ins. Co.*, 93 U. S. 284; *Gorgoza* v. *Ins. Co.*, 65 N. Y. 232; *Chapman* v. *Ins. Co.*, 6 Biss. 238; *Knights of the Golden Rule* v. *Ainsworth*, 17 Rep. 139; or, shall in that event only be liable for a certain sum, less than the amount of the insurance: *Salentine* v. *Ins. Co.*, 24 Fed. Rep. 159; *Frey* v. *Ins. Co.*, 52 N. W. Rep. 100) is valid. The difficulty in cases involving the application of provisions concerning self-destruction is in ascertaining the exact meaning of the language used. This difficulty has arisen partially from the fact that words and expressions are frequently employed which have more than one meaning, and partially from there being many degrees and kinds of insanity. As for instance, the word "suicide," as used in criminal law, means criminal self-murder; but in ordinary conversation it is used to cover all cases of voluntary self-destruction, whether committed while sane or insane. And so also, as to insanity; a man may be so completely insane as to be unable to comprehend the probable result of acts calculated to destroy life, or understand the character of the act of suicide; or, he may be driven to self-destruction by an insane impulse, temporary or otherwise, over which he has no control, and which he is unable to resist, though able, perhaps, to understand both the physical and moral character of his act; or, he may be morally insane so as to be unable to comprehend the moral character of suicide and be otherwise sane, and able to understand its physical character and probable consequences to others, and retain a certain amount of self-control. In any of these or of the many other cases of mental aberration which might be mentioned, the man is in common parlance said to be insane.

In construing provisions exempting insurers from liability in cases of self-destruction, the courts, and especially the American courts, hold that inasmuch as they are prepared by the insurer and provide for a forfeiture, they should always be construed most strongly against the company: *National Bank* v. *Ins. Co.*, 95 U. S. 673; *Schultz* v. *Ins. Co.*, 40 Ohio St. 217; *Ins. Co.* v. *Groom*, 86 Penn. St. 92.

CONSTRUCTION OF PARTICULAR PHRASES.—"*Die by his own hand;*" "*Die by his own hand or act;*" *Shall under any circumstances die by his own hand;*" "*Die by suicide*" and "*Commit suicide,*" are synonymous phrases: *Ins. Co.* v. *Terry*, 15 Wall. 580; *Schultz* v. *Ins. Co.*, 40 Ohio St. 217; *Breasted*

v. *Farmers' Loan and Trust Co.*, 4 Hill 74; *Ins. Co.* v. *Graves*, 6 Bush 268; *McEntire* v. *Ins. Co.*, 102 Mass. 230; *Phadenhauer* v. *Ins. Co.*, 7 Heisk. 567. Cases bearing directly upon one of them are cited by the courts as equally conclusive as to the others. They will, therefore, be considered together.

Accidental death.—In the first place, it may be noted that such phrases do not cover cases of accidental self-destruction. An intention to kill must be coupled with the fatal act: *Ins. Co.* v. *Paterson*, 41 Ga. 338. This has been held to be so, where the expressions used were much broader than the above, as for instance: "*die by suicide, whether voluntary or involuntary:*" *Edwards* v. *Ins. Co.*, 20 Fed. Rep. 661; and "*die by his own hand or act voluntary or otherwise:*" *Penfold* v. *Ins. Co.*, 85 N. Y. 317. And where a policy provided that it should be void in case of "*self-destruction of the person, whether voluntary or involuntary, and whether sane or insane,*" the language used was held not to include death resulting from a negligent act, unless the negligence was "culpable": *Ins. Co.* v. *Laurence*, 8 Brad. (Ill.) 488.

Insane Self-destruction.—What has been said as to the necessity of an intention on the part of the assured to kill himself, in order to bring the act within the meaning of the expressions first above quoted, is perfectly applicable in cases of insane self-destruction. Where the intention to destroy his own life is lacking, self-destruction by a lunatic is, to all intents and purposes, a mere accident, as was held in the principal case: *Mallory* v. *Ins. Co.*, 47 N. Y. 52.

In *Breasted* v. *Farmers' Loan and Trust Co.*, 4 Hill 73 (1843), the suit was upon a policy of insurance on the life of one Comfort. The policy contained a clause providing that, in case the assured should die upon the seas, &c., or *by his own hand*, or, in consequence of a duel, or by the hands of justice, &c., the policy should be void. The defendant pleaded that Comfort committed suicide by drowning himself. The replication was that he had drowned himself while he was of "*unsound mind and wholly unconscious of the act.*" To this the plaintiff demurred. The Supreme Court of New York held that the plaintiff was entitled to judgment. In delivering the opinion of the court NELSON, C. J., said: "Speaking legally also (and the policy should be subjected to the test), self-destruction by a fellow-being bereft of reason can with no more propriety be ascribed to the act of his *own hand* than to the deadly instrument that may have been used for the purpose. The drowning of Comfort was no more his act in the sense of the law, than if he had been impelled by irresistible physical power; nor is there any greater reason for exempting the company from the risk assumed in the policy than if his death had been occasioned by such means."

This is the earliest American case in point, and the language there used by the learned chief justice has recently been quoted with approval by the Supreme Court of the United States: *Manhattan Life Ins. Co.* v. *Broughton*, 109 U. S. 121, 131 (1883), and is believed by the writer to be a correct exposition of the law as it now stands, both in this country and England. Wherever a man is driven to the act of self-destruction by an insane impulse which he is powerless to resist, or where he takes his own life while unconscious of the physical nature of the act, his will is considered silent, and his act outside of the meaning of the word "suicide" and the synonymous expressions: *Banks* v. *Ins. Co.*, 5 Big. Life & Acc. Ins. Rep. 481; *Ins. Co.* v. *Rodel*, 95 U. S. 232; *Newton* v. *Ins. Co.*, 76 N. Y. 426; *Hathaway* v. *Ins. Co.*, 48 Vt. 335; *Eastbrook* v. *Ins. Co.*, 41 Me. 224; *Waters* v. *Ins. Co.*, 2 Fed. Rep. 892; *Weed* v. *Ins. Co.*, 41 N. Y. (Sup.

Ct.) 476; *Knickerbocker Life Ins. Co.* v. *Peters*, 42 Md. 414; *Ins. Co.* v. *Moore*, 34 Mich. 41. Contra, *Cooper* v. *Life Ins. Co.*, 102 Mass. 227.

Borradaile v. *Hunter*, 5 Manning & Gr. 639 (1843), is the leading English case upon this subject. The question there was as to the effect of moral insanity upon the insurer's liability. The policy sued on provided that in case the assured "shall die upon the seas, or go beyond the limits of Europe, or enter into or engage in any naval or military service whatsoever, unless license be obtained from a court of directors of the said society, or shall *die by his own hands*, or by the hands of justice, or in consequence of a duel," it should be void. The jury returned a verdict "that Mr. Borradaile voluntarily threw himself from the bridge with the intention of destroying life; but at the time of committing the act he was not capable of judging between right and wrong;" and a verdict was thereupon entered for the defendant. Upon appeal, it was held that this was correct, and that the mere fact of the assured's inability to judge between right and wrong was immaterial. This case has sometimes been referred to as authority for the proposition that where a person takes his own life intentionally it is to be considered a voluntary act and a death "by his own hand," within the meaning of the phrase as used in policies of insurance, whether the act is the direct result of insanity or not; but, as will be observed, it does not go that far. See *Clift* v. *Schwabe*, 3 Com. B. 437; *White* v. *Ins. Co.*, 38 L. J. Ch. (N. S.) 53.

In this country it has been followed in New York: *Van Zandt* v. *Ins. Co.*, 55 N. Y. 169; *Fowler* v. *Ins. Co.*, 4 Lans. 202; *Weed* v. *Life Ins. Co.*, 41 N. Y. (Sup. Ct.) 476. See, also, dictum in *Hathaway* v. *Ins. Co.*, 48 Vt. 335.

And the Supreme Court of Massachusetts has gone beyond it, and holds that where a policy provides that it shall be void in case the assured shall "*die by suicide*," and he takes his own life, knowing what the physical result of the act will be, that the policy will be avoided, even where the assured is impelled to the act by insanity: *Cooper* v. *Life Ins. Co.*, 102 Mass. 227.

Rule in Terry's Case.—In a large majority of the cases the courts of this country have refused to follow *Borradaile* v. *Hunter*, and hold that in order to constitute death by the assured's hand or act, the fatal act must be directed by the sane will of a mind capable of distinguishing between right and wrong, a knowledge of good and evil being considered as necessary to complete volition, as knowledge of the physical character of an act of self-destruction.

The leading case in favor of this view is *Life Ins. Co.* v. *Terry*, 1 Dill. 403; s. c. 15 Wall. 580 (1872), which was a suit upon a policy providing that "*if the said person whose life is hereby insured * * * shall die by his own hand * * * this policy shall be null and void.*" The case was tried in the Circuit Court by a jury, before Mr. Justice MILLER and DILLON, Circuit Judge. Evidence was introduced tending to show that the assured died from the effect of poison taken while insane. The defendant's counsel requested the court to instruct the jury. "*Second.* That if the jury believe from the evidence that the self-destruction of the said George Terry was intended by him, he having sufficient capacity at the time to understand the nature of the act which he was about to commit, and the consequences which would result from it, then, and in that case, it is wholly immaterial in the present case that he was impelled thereto by insanity, which impaired his sense of moral responsibility, and rendered him, to a certain extent, irresponsible for his actions."

The court refused to give the instruction, and charged, concerning the degree of insanity necessary to withdraw the act from the provision of the policy,

as follows: "It is not every kind or degree of insanity which will so far excuse the party taking his own life as to make the company insuring liable. To do this the act of self-destruction must have been the consequence of the insanity, and the mind of the decedent must have been so far deranged as to have made him incapable of using a rational judgment in regard to the act he was committing. If he was impelled to the act by an insane impulse, which the reason that was left him did not enable him to resist, or if his reasoning powers were so far overthrown by his mental condition that he could not exercise his reasoning faculties on the act he was about to do, the company is liable. On the other hand, there is no presumption of law, *prima facie* or otherwise, that self-destruction arises from insanity, and if you believe from the evidence that the decedent, although excited or angry or distressed in mind, formed the determination to take his own life, because, in the exercise of his usual reasoning faculties, he preferred death to life, then the company is not liable, because he died by his own hand within the meaning of the policy."

The jury found for the plaintiff, and there was judgment accordingly. The defendant took the case to the Supreme Court, where the judgment below was affirmed. In delivering the opinion of that court Mr. Justice HUNT said: "We hold the rule on the question before us to be this: If the assured, being in the possession of his ordinary reasoning faculties, from anger, pride, jealousy, or a desire to escape from the ills of life, intentionally takes his own life, the proviso attaches, and there can be no recovery if the death is caused by the voluntary act of the assured, he knowing and intending that his death shall be the result of his act; but when his reasoning faculties are so far impaired that he is not able to understand the moral character, the general nature, consequences and effect of the act he is about to commit, or when he is impelled thereto by an insane impulse, which he has not the power to resist, such death is not within the contemplation of the parties to the contract, and the insurer is liable."

This rule has been criticised, both as lacking in clearness and as being uncalled for by the facts of the case (*Van Zandt* v. *Ins. Co.*, 55 N. Y. 269), but it does not appear to the writer open to either objection, and it has been approved and followed in later cases which have came before the same tribunal: *Ins. Co.* v. *Rodel*, 95 U. S. 232; *Ins. Co.* v. *Broughton*, 109 U. S. 121.

The meaning of the rule in *Terry's case* is made plainer, if possible, by what was said by Mr. Justice GRAY in *Ins. Co.* v. *Broughton*. In delivering the opinion of the Supreme Court in that case, he said that an act of self-destruction is not to be considered the act of the assured when his "reason is so clouded or disturbed by insanity as to prevent his understanding the real nature of the act as regards either its physical consequences or moral aspect."

The rule in *Terry's Case* has been adopted in Georgia: *Life Ass. of Am.* v. *Waller*, 57 Ga. 553. Tennessee: *Phadenhauer* v. *Ins. Co.*, 7 Heisk. 567. Michigan: *Ins. Co.* v. *Moore*, 34 Mich. 41. Ohio: *Schultz* v. *Ins. Co.*, 40 Ohio St. 217, and Pennsylvania: *Ins. Co.* v. *Groom*, 86 Penn. St. 92; *Ins. Co.* v. *Isett's Adm'r.*, 74 Id. 176.

PHRASES EMBRACING INSANE SELF-DESTRUCTION.—"*Die by his own hand sane or insane:*" *Gogorza* v. *Ins. Co.*, 65 N. Y. 232. "*Die by his own act or intention, whether sane or insane:*" *Adkins* v. *Ins. Co.*, 70 Mo. 27. "*Die by suicide, sane or insane:*" *Bigelow* v. *Ins. Co.*, 93 U. S. 284. "*Die by suicide, felonious or otherwise, sane or insane:*" *Pierce* v. *Ins. Co.*, 34 Wis. 389; and die by "*self-destruction, felonious or otherwise:*" *Riley* v. *Hartford Life & Annu-*

ity Ins. Co., 25 Fed. Rep. 315; see also *dictum* in *Bigelow* v. *Ins. Co.*, 93 U. S. 284, 288, are synonymous expressions and include all cases of voluntary self-destruction, with an understanding of the physical character of the act, whether the act is the result of an insane condition of the assured's mind or not.

PRESUMPTIONS.—*Evidence.*—Where a person is found drowned without any marks of violence on his person, that fact is, of itself, no evidence of suicide: *Ins. Co.* v. *Delpeuch*, 82 Penn. St. 225; nor is the fact that the deceased was a spiritualist and believed he would enjoy the pleasures of this life in the next, admissible in evidence under such circumstances to establish suicide: *Ins. Co.* v. *Delpeuch*, *supra*.

The presumption is ordinarily in favor of a natural death: *Hancock* v. *Ins. Co.*, 34 Mich. 42; *Ins. Co.* v. *Hogan*, 80 Ill. 35.

In *Terry's Case*, Mr. Justice MILLER instructed the jury, as we have seen, that "there is no presumption of law, *prima facie* or otherwise, that self-destruction arises from insanity," and the rule, as stated by him is supported by the cases: *Weed* v. *Ins. Co.*, 41 N. Y. (Sup. Ct.) 476; *Phadenhaur* v. *Ins. Co.*, 7 Heisk. 567; *Coffey* v. *Ins. Co.*, 35 N. Y. (Sup. Ct.) 314.

In *Schultz* v. *Ins. Co.*, 40 Ohio St. 217, it was held that the presumption in case of suicide, is that it was committed while sane; but the true rule is probably as suggested in a New York case, that there is no presumption either way: *Coffey* v. *Ins. Co.*, 35 N. Y. (Sup. Ct.) 314. In two cases it has been held that where there is other evidence of insanity the fact of suicide may be considered in connection with that evidence: *Scheffer* v. *Life Ins. Co.*, 25 Minn. 534; *Weed Ins. Co.*, 35 N. Y. (Sup. Ct.) 386.

BENJAMIN F REX.

St. Louis, Mo.

Supreme Court of Minnesota.

HAMMOND *v.* PEYTON, ASSIGNEE.

As a general rule, the equitable lien of the grantor of real estate for the price thereof is not assignable, although there may be exceptions to this rule in favor of persons who merely stand as representatives of the grantor.

The lien itself is not in accordance with the policy of the law, and should be restricted rather than fostered.

APPEAL from an order of the District Court, Saint Louis county.

The opinion of the Court was delivered by

BERRY, J.—The equitable lien of a grantor for the price of real estate has been recognised by this court in *Selby* v. *Stanley*, 4 Minn. 65, Gil. 34; *Doughaday* v. *Paine*, 6 Minn. 443, Gil. 304; *Duke* v. *Balme*, 16 Id. 306, Gil. 270; and *Walter* v. *Hanson*, 24 N. W. Rep. 186.

But whether the lien is assignable, or whether, if assignable, it passes upon the transfer of the debt which it secures as an incident